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BELLSOUTH

Ben G. Almond
Executive Director-
Federal Regulatory

Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036
202 463-4112
Fax: 202 463-4198

May 27, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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MAY 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: CC Docket 90-314
Ex Parte Presentation

Dear Mr. Caton:

In accordance with the requirements of Section 1.1200 et. seq. of the Commission's Rules, you are hereby notified that on May 27, 1994 David J. Markey, Vice President-Governmental Affairs; Tom Dougherty, Executive Director-PCS Group; Gary Hight, Executive Director-Wireless Group and Ben Almond, Executive Director-Federal Regulatory, all of BellSouth Corporation, met with Commissioner Susan Ness; Commissioner Rachelle B. Chong; Rosalind Allen, Interim Advisor to Commissioner Ness; and Richard Welch, Legal Advisor to Commissioner Chong. During the meeting we discussed issues addressed in the Petition of Reconsideration and comments filed on behalf of BellSouth Corporation and certain of its subsidiaries in the referenced docket. The attached documents were used for discussion purposes.

Please associate this notification with the docket in the referenced proceeding.

If there are any questions in this regard, please contact the undersigned.

Sincerely,



Ben G. Almond
Executive Director-Federal Regulatory

Attachments

cc: Rachelle Chong
Susan Ness
Rosalind Allen
Richard Welch

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AGENDA

- 20 MHz Allocations Required
- Open Eligibility
- Spectrum Equality
- Mobile Satellite Services

Limitations on 10 MHz Licenses

Spectrum limitations dictate.....

- Single application, mobility only
- Low usage service, no wireline replacement

Competitive implications.....

- Fragmented market
- Lower functionality and/or capacity
- Inability to differentiate from existing providers' services
- Limited market share

Financial impact.....

- Low revenue per subscriber
- High fixed costs

10 MHz Service Concepts Tested

- 1) Low Power, Limited Mobility (Pedestrian Speed Hand Off)
 - Shared telco infrastructure
 - WACs architecture (TDMA)
 - Low cost network and handsets
- 2) Combination - Limited Mobility + Cellular
 - WACs architecture, shared telco infrastructure
 - Dual mode handset (PCS + 800 MHZ cellular)
- 3) Combination - Full Mobility PCS + Cellular
 - DCS 1900 PCS architecture

Business cases were developed for each service concept and modeled within a BellSouth test market with 1.5M pops.

BellSouth

Business Case Results - 2010

	<u>Limited Mobility PCS</u>	<u>Limited Mob. PCS+Cellular</u>	<u>Full PCS +Cellular</u>
Cumulative Market Share	5%	15%	15%
Annual Revenue	\$15M	\$55M	\$57M
Cum. Free Cash Flow - 2010	(\$179M)	(\$28M)	(\$73M)

Assumes 0% Cost of Capital

BellSouth

Impact On Spectrum Allocation

- 10 MHz blocks are insufficient
- 20 MHz blocks needed for viable and spectrally efficient licenses
- Adjustments in the current allocation plan are essential

Revenue Contribution To Deficit Reduction

- Expand the number of participants in the auction by increasing aggregation limits to 45 MHz
- A more balanced licensing scheme will generate greater interest among bidders and more value

Diversity Of Ownership/ Eligibility

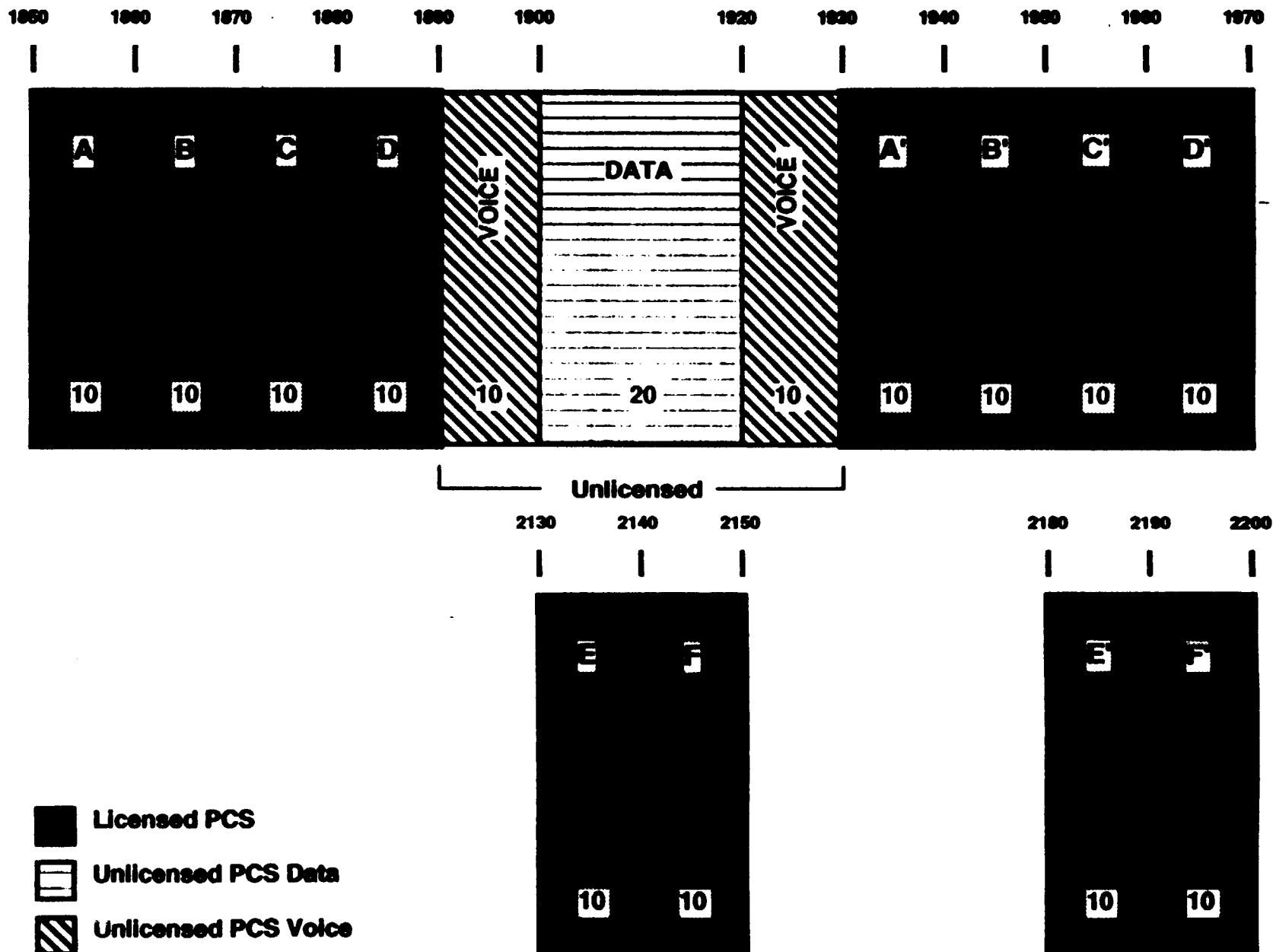
- Address diversity of ownership objectives through financial incentives and open, non-controlling equity partnerships (rather than set asides)
- Provide designated entities with the flexibility to select partners with resources and skill sets required to make their business a success

Proposed Allocation Plan

- All Licenses of equal spectrum
- Existing providers not restricted from competing in any market
- Encourages efficient utilization of spectrum

A 20 MHz license plan eliminates many current problems and supports the FCC's goals for a competitive PCS market

BellSouth 20 MHz Frequency Plan



Mobile Satellite

Major Issues

2180-2200 MHz PCS frequencies conflict with WARC '92 worldwide allocation for MSS.

Mobile satellite users cannot co-exist with PCS systems operating in bands D-G.

Using other Emerging Technology spectrum at 2110-2130 creates contiguous block.

Mobile Satellite

Contiguous Block Problems

Contiguous block eliminates frequency separation for duplex operation.

2110-2130 currently occupied by Common Carrier microwave.

Contiguous block limits technology choices to TDD.

TDD not suitable for outdoor, full mobility services.

Contiguous block suitable for unlicensed services.

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U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515-6115

September 21, 1993

ALAN J. ROTH, STAFF DIRECTOR AND CHIEF COUNSEL
DENNIS B. FITZGIBBONS, DEPUTY STAFF DIRECTOR

The Honorable James H. Quello
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

Later this week, the Commission will make its decision on General Docket 90-314, pertaining to the creation of the Personal Communications Service (PCS). I am writing with respect to many of the issues that the Commission must address in this item.

As you are well aware, in early August the President signed into law P.L. 103-66, which contains, among other things, provisions that permit the Commission to issue licenses utilizing competitive bidding procedures. The enactment of this statute, and the consequent reliance upon market forces by the Commission, will have a profound effect upon the manner in which the Commission approaches the creation of a new service such as PCS.

Historically, the Commission has had the luxury of making an initial decision, in which it attempted to anticipate the behavior of the marketplace. It could then rely upon the aftermarket to make any necessary corrections. Thus, while the Cellular Service was licensed according to Metropolitan Service Areas (MSAs) and Rural Service Areas (RSAs), the aftermarket permitted licensees to combine territories to improve efficiencies and reduce costs. Similarly, inter-system "roaming" arrangements were made, and licensees affiliated with each other to permit national marketing efforts.

The competitive bidding authority enacted earlier this year permits the Commission to adopt a **process** of awarding licenses that replicates for the Government the market conditions that otherwise would have led to transactions in the aftermarket. If

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the Commission takes advantage of its new authority by rethinking and fundamentally altering its approach to allocation decisions, it will achieve several important policy goals, as discussed below.

Let me be more specific. Numerous commenting parties have encouraged the Commission to adopt PCS license territories that either are large (nationwide or regional) or small (Basic Trading Areas (BTAs)). They have supplied a variety of reasons to support their preferences.

Using its traditional approach to allocation decisions, the Commission would make a decision based upon its record. Perhaps a political compromise would be reached that would assign license territories larger than BTAs, but smaller than Major Trading Areas (MTAs), such as the Commerce Department's proposal to utilize "economic areas". Once the Commission commenced to issue licenses to offer service in these territories, a series of private negotiations would be held among licensees to rationalize any anomalies that resulted from the Commission's allocation decisions.

While this informal two step process has worked satisfactorily in the past, there were several unfortunate by-products. First, service to the public was delayed while these private negotiations were held and transactions executed. Second, licensees had higher costs as a result of making the necessary adjustments. Third, potential economies of scale and scope -- affecting, for example, common standards for equipment -- were either delayed pending the private negotiations, or foregone altogether. Fourth, those who were in the enviable position of being able to exploit the differences between the Commission's decision and the imperatives of the marketplace were unjustly enriched.

With the adoption of the competitive bidding procedures, however, Congress has given the Commission the ability to avoid these unfortunate by-products. If the Commission is willing to change its thinking, and adopt a dynamic procedure that reflects market imperatives in the competitive bidding process, it can speed delivery of service, reduce prices to consumers, and avoid unjust enrichment. It can also take itself out of the process of picking winners and losers, by structuring a competitive bidding process that permits market forces to work.

For example, as noted above, there is currently a great deal of controversy surrounding the service territories for PCS licensees. The Commission can make an educated "guess" about which alternative is preferable; it can also adopt a compromise that is politically palatable. Another approach is as follows:

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Through a series of auctions, the Commission can permit the market to determine the optimal size of license areas. For example, the Commission could first accept bids for each of the BTAs within a given MTA. It could then accept bids for the MTA license that is composed of these BTAs. If the aggregated value of the BTA bids exceeds the value of the highest MTA bid, it is clear that the market is deciding that the smaller service territories are more valuable and desirable to prospective licensees. Conversely, if the highest bid for the MTA license exceeds the aggregated value of the highest BTA bids, the opposite conclusion can be reached.

This process could be repeated for a nationwide license. Again, if the highest bid for such a nationwide license exceeds the aggregated highest bids for MTAs, the market is telling the Commission that the service should be licensed on a nationwide basis.

If the Commission fails to follow that advice, it will be creating a situation in which the effort to "correct" the Commission's mistake will be time-consuming, will lead to unjust enrichment, and will delay service to the public. If the Commission structures a bidding methodology that permits the marketplace to work, it will avoid these unfortunate outcomes. Moreover, it will maximize revenues to the Treasury. While I recognize that the new section 309(j) prohibits the Commission from taking these revenues into account, it would be serendipitous indeed if good telecommunications policy enhanced our efforts to reduce the deficit. Structuring the bidding process so as to incorporate the corrective effects of the aftermarket could achieve precisely that result.

I am writing to you about this process because there have been reports in the press indicating that the Commission is leaning toward licensing options that may represent good faith efforts to implement the new competitive bidding authority, but which appear to be based on a now dated approach to effective and efficient spectrum management. I am concerned that relying on an out dated approach could have the unfortunate effect of postponing the development of the optimum licensing scheme -- as determined by the marketplace -- until after the Commission's grant of initial licenses. If, for example, the Commission decides not to grant any nationwide licenses, that could substantially delay the delivery of service to the public. It could preclude a licensee from aggregating consumers, thereby lowering costs and reducing prices. And it could result in unjust enrichment.

In contrast, adopting the "combinatorial" approach discussed above would not preclude any particular outcome. It is my hope that when the Commission makes its decision on Thursday, it will

recognize that the enactment of the competitive bidding statute has altered fundamentally the way in which the Commission approaches allocation decisions. It is my hope that the Commission will instead recognize that it no longer has to substitute its judgment for the marketplace for determinations such as the optimal geographic area for a PCS license, and rely on the aftermarket to correct any mistakes that the Commission has made.

A similar argument can be made with respect to the amount of bandwidth that is to be licensed in the new service. Some commentators have urged the Commission to adopt a licensing scheme that permits relatively large assignments of 40 Mhz per license. Others have urged substantially smaller assignments. Using a variation of the "combinatorial" approach outlined above, the Commission can structure a licensing approach that permits the marketplace to dictate bandwidth based on the value of the bids. As is the case with service territories, structuring the competitive bidding process to accommodate marketplace imperatives can accelerate the delivery of service, while avoiding unjust enrichment.

I am also concerned about press reports regarding several other elements of the Commission's decision on this matter. There has been extensive discussion about whether existing licensees, licensed in the cellular service, should be eligible for licenses in the Personal Communications Service. In my view, to the extent that the Commission plans to issue a sufficient number of licenses so as to preclude warehousing or other anti-consumer conduct, these companies ought to be able to acquire licenses in the new service. Moreover, inasmuch as the Bell Operating Companies are precluded from many markets by virtue of the Modification of Final Judgment, excluding them from offering Personal Communications Services does not make sense.

Finally, I am concerned that the Commission may be misinterpreting the intent of Congress with respect to set-asides for rural telephone companies, small businesses and businesses owned by minorities and women. As you may be aware, the concept of mandated set-asides for rural telephone companies was expressly rejected during the course of the Committee's consideration of the legislation. It was again rejected during the House-Senate Conference. The new statute contains ample flexibility for the Commission to promote opportunities for rural telephone companies, small businesses and businesses owned by minorities and women without resorting to set-asides. It can do so by requiring successful bidders to affiliate with other companies for construction of facilities or for offering services. It can mandate performance criteria that assures delivery of service to areas where market forces may be inadequate. In short, the Commission has an enormous amount of

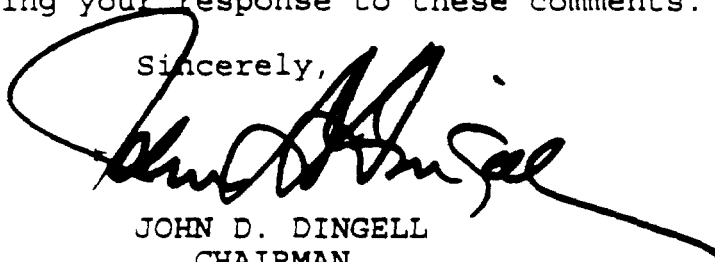
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discretion to fulfill its statutory responsibilities without resorting to set-asides.

It is my hope that the Commission will be guided by the express language of section 309(j)(4)(C), which directs the Commission to prescribe area designations and bandwidth assignments that are "consistent with the public interest, convenience, and necessity, **and the characteristics of the proposed service**" [emphasis added]. If small service territories that lend themselves to bids by rural telephone companies or other small businesses are consistent with the characteristics of the proposed PCS service, then the Commission has the ability to structure such a licensing scheme. If, however, the Commission expects the PCS service to be one which is dominated by big businesses operating on a nationwide basis, it ought to fulfill its statutory mandate to provide opportunities by taking an alternative approach.

I ask that a copy of this letter be made part of the Commission's Record in this proceeding, and hope that it is useful to you as you complete your deliberations this week. If I or the Committee staff can be of any assistance to you, please do not hesitate to contact me. I look forward to reviewing your decision, and to receiving your response to these comments.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "John D. Dingell". The signature is written over the printed name and title.

JOHN D. DINGELL
CHAIRMAN